

Part 12

Pornographic and Harmful Materials and Performances

76-10-1201 Definitions.

For the purpose of this part:

- (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.
- (2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.
- (3) "Distribute" means to transfer possession of materials whether with or without consideration.
- (4) "Exhibit" means to show.
- (5)
 - (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:
 - (i) taken as a whole, appeals to the prurient interest in sex of minors;
 - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (iii) taken as a whole, does not have serious value for minors.
 - (b) Serious value includes only serious literary, artistic, political or scientific value for minors.
- (6)
 - (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.
 - (b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.
- (7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.
- (8) "Minor" means any person less than 18 years of age.
- (9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.
- (10) "Nudity" means:
 - (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;
 - (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
 - (c) the depiction of covered male genitals in a discernibly turgid state.
- (11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.
- (12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.
- (13) "Sadomasochistic abuse" means:

- (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
- (b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).
- (14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.
- (15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Amended by Chapter 278, 2013 General Session

76-10-1203 Pornographic material or performance -- Expert testimony not required.

- (1) Any material or performance is pornographic if:
 - (a) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
 - (b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and
 - (c) Taken as a whole it does not have serious literary, artistic, political or scientific value.
- (2) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value.
- (3) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

Amended by Chapter 92, 1977 General Session

76-10-1204 Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.

- (1) A person is guilty of distributing pornographic material when the person knowingly:
 - (a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;
 - (b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;
 - (c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;
 - (d) writes, creates, or solicits the publication or advertising of pornographic material;
 - (e) promotes the distribution or exhibition of material the person represents to be pornographic; or
 - (f) presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion of the performance which makes it pornographic.
- (2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.

- (3) It is a separate offense under this section for:
 - (a) each day's exhibition of any pornographic motion picture film; and
 - (b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (4)
 - (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.
 - (b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
 - (c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
 - (d) Subsection (4)(a) supersedes Section 77-18-1.
- (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).
- (6)
 - (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:
 - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
 - (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and
 - (iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.
 - (b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
 - (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
 - (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Amended by Chapter 345, 2009 General Session

76-10-1204.5 Reporting of child pornography by a computer technician.

- (1) As used in this section:
 - (a) "Child pornography" means the same as that term is defined in Section 76-5b-103.

- (b) "Computer technician" or "technician" means an individual who in the course and scope of the individual's employment for compensation installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.
 - (c) "Image" means an image of child pornography or an image that a computer technician reasonably believes is child pornography.
- (2)
- (a) A computer technician who in the course of employment for compensation views an image on a computer or other electronic device that is or appears to be child pornography shall immediately report the finding of the image to:
 - (i) a state or local law enforcement agency, or the Cyber Tip Line at the National Center for Missing and Exploited Children; or
 - (ii) an employee designated by the employer of the computer technician in accordance with Subsection (3).
 - (b) A computer technician who willfully does not report an image as required under Subsection (2)(a) is guilty of a class B misdemeanor.
 - (c) The identity of the computer technician who reports an image shall be confidential, except as necessary for the criminal investigation and the judicial process.
 - (d)
 - (i) If the computer technician makes or does not make a report under this section in good faith, the technician is immune from any criminal or civil liability related to reporting or not reporting the image.
 - (ii) In this Subsection (2)(d), good faith may be presumed from an employee's or employer's previous course of conduct when the employee or employer has made appropriate reports.
 - (e) It is a defense to prosecution under this section that the computer technician did not report the image because the technician reasonably believed the image did not depict a person younger than 18 years of age.
- (3)
- (a) An employer of a computer technician may implement a procedure that requires:
 - (i) the computer technician report an image as is required under Subsection (2)(a) to an employee designated by the employer to receive the report of the image; and
 - (ii) the designated employee to immediately forward the report provided by the computer technician to an agency under Subsection (2)(a)(i).
 - (b) Compliance by the computer technician and the designated employee with the reporting process under Subsection (3)(a) is compliance with the reporting requirement of this section and establishes immunity under Subsection (2)(d).
- (4) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if the provider reports the image in compliance with 18 U.S.C. 2258A or a successor federal statute that requires reporting by a provider of an image of child pornography.

Enacted by Chapter 313, 2016 General Session

76-10-1205 Inducing acceptance of pornographic material -- Exemptions for Internet service providers and hosting companies.

- (1) A person is guilty of inducing acceptance of pornographic material when he knowingly:

- (a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or
 - (b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.
- (2)
- (a) An offense under this section is a third degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$1,000 plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.
 - (b) This Subsection (2) supersedes Section 77-18-1.
- (3)
- (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:
 - (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
 - (ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and
 - (iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.
 - (b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
 - (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
 - (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Amended by Chapter 337, 2007 General Session

76-10-1206 Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies.

- (1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:
 - (a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;
 - (b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

- (c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.
- (2)
 - (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence, for a term of not less than 14 days.
 - (b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.
 - (c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.
 - (d) Subsection (2)(a) supersedes Section 77-18-1.
- (3)
 - (a) If a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:
 - (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration, without suspension of sentence, for a term of not less than one year.
 - (b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.
 - (c) Subsection (3)(a) supersedes Section 77-18-1.
 - (d)
 - (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:
 - (A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:
 - (I) transmitting or routing data from one person to another person; or
 - (II) providing a connection between one person and another person;
 - (B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and
 - (C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.
 - (ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:
 - (A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
 - (C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as

a specific condition for permitting the person to distribute, store, or cache the pornographic material.

- (4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.
- (5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

Amended by Chapter 345, 2009 General Session

76-10-1207 Use of real property by tenant or occupant -- Voiding of lease -- Allowance of such use by owner or lessor.

- (1) If a tenant or occupant of real property uses this property for an activity for which he or his employee is convicted under any provision of this part, the conviction makes void the lease or other title under which he holds at the option of the fee owner or any intermediate lessor; and 10 days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he is exercising the option, the right of possession to the property reverts in the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or his employee.
- (2) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow this property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his employee, has been convicted under any provision of this part of an offense occurring on the same property and all avenues of direct appeal from the conviction have been exhausted or abandoned.
 - (a) "Allow" under this subsection (2) means a failure to exercise the option arising under subsection (1) within 10 days after the fee owner or lessor receives notice in writing from the county attorney of the county where the property is situated, or if situated in a city of the first or second class, from the city attorney of that city, that the property is being used for a purpose prohibited by this subsection (2).
 - (b) A willful violation of this subsection (2) is a class A misdemeanor and any fine assessed, if not paid within 30 days after judgment, shall become a lien upon the property.
- (3) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by subsection (1) and who does not quit the premises within 10 days after the giving of that notice is guilty of a class A misdemeanor.

Enacted by Chapter 92, 1977 General Session

76-10-1207.5 Exemption -- Corrections treatment, programs.

This part does not apply to the Department of Corrections or any treatment program by or under contract with the department when the use of sexually explicit material that is pornographic is limited to the assessment or treatment of an offender as defined under Section 64-13-1.

Enacted by Chapter 138, 1990 General Session

76-10-1208 Affirmative defenses.

- (1) It is an affirmative defense to prosecution under this part that the distribution of pornographic material is restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.
- (2) It is not a defense to prosecution under this part that the actor is a motion picture projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate this part incident to the person's employment.
- (3) It is an affirmative defense to prosecution under Section 76-10-1206, 76-10-1227, or 76-10-1228 for displaying or exhibiting an outer portion of material, that the material is:
 - (a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;
 - (b) placed behind a blinder rack; or
 - (c) displayed in an area from which a minor is physically excluded if the material cannot be viewed by the minor from an area in which a minor is allowed.

Amended by Chapter 123, 2007 General Session

76-10-1209 Injunctive relief -- Jurisdiction -- Consent to be sued.

- (1) The district courts of this state shall have full power, authority, and jurisdiction, upon application by any county attorney or city attorney within their respective jurisdictions or the attorney general, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this part. No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues commencing within three days after filing of an answer to the complaint and a decision shall be rendered by the court within two days after the conclusion of the trial. If a final order or judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any pornographic material in the person's possession which is subject to the injunction; and the sheriff shall be directed to seize and destroy this material.
- (2) Any person not qualified to do business in the state who sends or brings any pornographic material into the state with the intent to distribute or exhibit it to others in this state consents that the person may be sued in any proceedings commenced under this section.

Amended by Chapter 43, 2010 General Session

76-10-1210 Relation to other laws.

- (1)
 - (a) It is not the intent of this part to prescribe or limit the regulation of pornographic materials or materials harmful to minors, and counties, cities, and other political subdivisions are specifically given the right to further regulate the materials.
 - (b) Without limitation, a political subdivision may further regulate materials by ordinances relating to:
 - (i) zoning;
 - (ii) licensing;
 - (iii) public nuisances;
 - (iv) a specific type of business such as adult bookstores or drive-in movies; or
 - (v) use of blinder racks.

- (2) It is not the intent of this part to preclude the application of other laws of this state to pornographic materials or materials harmful to minors. Specifically, without limitation, this part is not in derogation of Sections 76-10-803 and 76-10-806.
- (3) The commission of a crime under this part shall be considered to offend public decency under Section 76-10-803. It is the intent of this part to give the broadest meaning permissible under the federal and state constitutions to the words "offends public decency" in Section 76-10-803.

Amended by Chapter 123, 2007 General Session

76-10-1211 Separability clause.

If any clause, sentence, paragraph, or part of this part or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder of this part or its application to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, persons, or circumstances, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

Amended by Chapter 20, 1995 General Session

76-10-1212 Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.

- (1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant to afford the magistrate the opportunity to examine this material.
- (2) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by other manner or means that he finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.
- (3)
 - (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within 10 days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.
 - (b) The magistrate shall set a hearing within seven days after the filing of this notice, or at another time to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.
 - (c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.

- (d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.
- (e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.
- (4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it may not be returned.
- (5)
 - (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.
 - (b) This section does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state.

Amended by Chapter 53, 2000 General Session

76-10-1213 Corporate defendants -- Summons -- Subpoena duces tecum.

- (1)
 - (a) The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic or harmful to minors, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or harmful to minors or by another manner or means the magistrate finds necessary.
 - (b) Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit so as to afford the magistrate the opportunity to examine this material.
 - (c) The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier, or assistant cashier of the corporation.
- (2) The production of material alleged to be pornographic or harmful to minors in any proceedings under this part against a corporation may be compelled by the issuance and service of a subpoena duces tecum. This section does not prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.

Amended by Chapter 53, 2000 General Session

76-10-1214 Conspiracy an offense -- Punishment.

- (1) A conspiracy of two or more persons to commit any offense proscribed by this part is a third degree felony punishable for each separate offense by a minimum mandatory fine of not less than \$1,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than 60 days. This subsection supersedes Section 77-18-1.
- (2) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than

\$5,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than one year. This subsection supersedes Section 77-18-1.

Amended by Chapter 163, 1990 General Session

76-10-1215 Prosecution by county, district, or city attorney -- Fines payable to county or city.

Prosecution for violation of any section of this part, including a felony violation, shall be brought by the county attorney or, if within a prosecution district, the district attorney of the county where the violation occurs. If the violation occurs, however, in a city of the first or second class, prosecution may be brought by either the county, district, or city attorney, notwithstanding any provision of law limiting the powers of city attorneys. All fines imposed for the violation of this part shall be paid to the county or city of the prosecuting attorney, as the case may be.

Amended by Chapter 38, 1993 General Session

76-10-1216 Distribution of motion picture films -- Definitions.

As used in this act:

- (1) "Exhibit" means to show in a public place or in a place where the public is admitted, whether or not an admission fee is charged.
- (2) "Distributor" means any person from which a film is acquired by sale, lease, loan, or any other means, directly or indirectly, for the purpose of exhibiting it in this state or elsewhere but shall not include any person whose function with respect to any film is limited to the transportation or storage thereof.
- (3) "Film" means what is usually known as a motion picture film and which is intended to be shown commercially for profit by devices of any kind whatsoever.
- (4) "Person" includes a natural person, firm, association, partnership, or corporation.
- (5) "Public place" includes any place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding it is designated as a private club or by words of like import.

Enacted by Chapter 92, 1977 General Session

76-10-1217 Intent to prevent commercial distribution and exhibition of pornographic films-- Local regulation and other laws not limited.

- (1) It is the intent of this act to prevent the commercial distribution and exhibition of films in this state which are pornographic. There is substantial evidence that elements of organized crime have engaged to an increasing degree in the production and distribution of such films and, therefore, it is the further intent of this act to facilitate the criminal prosecution of distributors of pornographic films.
- (2) It is not the intent of this act to limit the regulation of films by counties, cities, towns, and other political subdivisions within the state, and these subdivisions are specifically given the right by this act to further regulate films. Nor is it the intent of this act to limit or abridge the power to otherwise prosecute violations of any other provisions of law including, but not limited to, those provisions of Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances.

Enacted by Chapter 93, 1977 General Session

76-10-1218 Qualification for exhibition and distribution of films required.

No person shall distribute any film for exhibition in this state unless that person is first qualified to do so nor exhibit any film in this state which was not acquired for exhibition, directly or indirectly, from a distributor qualified to distribute films in this state.

Enacted by Chapter 93, 1977 General Session

76-10-1219 Qualification for distribution of films.

- (1) A distributor which is a corporation shall be qualified to distribute films within this state if:
 - (a) it is a domestic corporation in good standing or a foreign corporation authorized to transact business in this state; and
 - (b) it submits itself to the jurisdiction and laws of this state relating to being a distributor in this state.
- (2) A distributor which is not a corporation shall be qualified to distribute films within this state if:
 - (a) it has and continuously maintains a registered office in this state; and
 - (b) it has a registered agent whose business address is at that registered office and which is either an individual residing and domiciled in this state, a domestic corporation in good standing, or a foreign corporation authorized to transact business in this state.
- (3) This section shall not affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a distributor, in any other manner provided by law.

Amended by Chapter 43, 2010 General Session

Amended by Chapter 324, 2010 General Session

76-10-1220 Change of registered office or agent by film distributor.

A distributor qualified to distribute films in this state may change its registered office or registered agent in accordance with Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 43, 2010 General Session

76-10-1221 Service of process, notice, or demand on registered agent of film distributor.

Any process, notice, or demand required or permitted by law to be served upon the distributor may be served upon the registered agent of that distributor.

Amended by Chapter 43, 2010 General Session

76-10-1222 Distribution of pornographic film -- Penalties for violations.

- (1) Any person who knowingly or by criminal negligence distributes for exhibition within this state a film which is pornographic as that term is defined in the Utah criminal code shall be guilty of a class A misdemeanor and shall, for each separate offense, be fined not less than \$1,000 and imprisoned, without suspension of sentence in any way, for a term of not less than 60 days.
- (2) Any person convicted of a violation of this section who has been convicted before of a violation of this section, shall be guilty of a felony of the third degree and shall, for each separate offense, be fined not less than \$5,000 and imprisoned, without suspension of sentence in any way, for a term of not less than six months.
- (3) Each copy of a pornographic film distributed for exhibition within this state in violation of this section shall constitute a separate offense.

Enacted by Chapter 93, 1977 General Session

76-10-1223 Distribution of film without being qualified -- Exhibition of film not acquired from qualified distributor -- Penalties for violations.

- (1) Any person who knowingly distributes any film for exhibition within this state without being qualified to do so, or who knowingly exhibits a film in this state which has not been acquired from a distributor qualified to distribute films in this state is guilty of a class B misdemeanor and shall, for each separate offense, be fined not less than \$299 and imprisoned, without suspension of sentence in any way, for a term of not less than 30 days.
- (2) Any person convicted of a violation of this section, who has been convicted before of a violation of this section, shall be guilty of a class A misdemeanor and shall, for each separate offense, be fined not less than \$1,000 and imprisoned, without suspension of sentence in any way, for a term of not less than 60 days.
- (3) Each day's exhibition of such a film, and each copy of a film distributed for exhibition within this state, shall constitute a separate offense.

Enacted by Chapter 93, 1977 General Session

76-10-1224 Defense to prosecution for distribution or exhibition of pornographic film -- Status as projectionist or other employee no defense.

- (1) It shall be an affirmative defense to any prosecution under Section 76-10-1222 or 76-10-1223 that the distribution is exempt from the restrictions of this act by the provisions of Section 76-10-1226.
- (2) It shall not constitute a defense to any prosecution under Section 76-10-1222 or 76-10-1223 that the actor was a motion picture projectionist or was otherwise required by his employment to commit the violation complained of.

Enacted by Chapter 93, 1977 General Session

76-10-1225 Prosecution of pornographic film violations by county attorney, district attorney, or city attorney.

The county attorney of the county where the violation occurred or within a prosecution district where the violation occurred, the district attorney shall file and prosecute any action for violations of this act unless the violation occurs in a city of the first or second class. If the violation occurs in such a city, the action may be commenced and prosecuted by either the city attorney or the county attorney. All fines imposed for any violation of this act shall be paid to the political subdivision employing the prosecuting attorney.

Amended by Chapter 38, 1993 General Session

76-10-1226 Exemptions from application of film distribution act.

This part does not apply to any film:

- (1) distributed to or exhibited by any accredited university, college, school, library, or other educational institution, church, or museum, if there is scientific, religious, or educational justification for the exhibition of the film; or

- (2) exhibited by the Department of Corrections or exhibited as part of any treatment program operated by or under contract with the department if the exhibition of the film is solely for the assessment or treatment of an offender as defined under Section 64-13-1.

Amended by Chapter 138, 1990 General Session

76-10-1227 Indecent public displays -- Definitions.

- (1) For purposes of this section and Section 76-10-1228:
 - (a) "Description or depiction of illicit sex or sexual immorality" means:
 - (i) human genitals in a state of sexual stimulation or arousal;
 - (ii) acts of human masturbation, sexual intercourse, or sodomy;
 - (iii) fondling or other erotic touching of human genitals or pubic region; or
 - (iv) fondling or other erotic touching of the human buttock or female breast.
 - (b) "Nude or partially denuded figure" means:
 - (i) less than completely and opaquely covering human:
 - (A) genitals;
 - (B) pubic regions;
 - (C) buttock; and
 - (D) female breast below a point immediately above the top of the areola; and
 - (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (2)
 - (a) Subject to Subsection (2)(c), this section and Section 76-10-1228 do not apply to any material which, when taken as a whole, has serious value for minors.
 - (b) As used in Subsection (2)(a), "serious value" means having serious literary, artistic, political, or scientific value for minors, taking into consideration the ages of all minors who could be exposed to the material.
 - (c) A description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors.

Amended by Chapter 123, 2007 General Session

76-10-1228 Indecent public displays -- Prohibitions -- Penalty.

- (1) Subject to the affirmative defense in Subsection 76-10-1208(3), a person is guilty of a class A misdemeanor who willfully or knowingly:
 - (a) engages in the business of selling, lending, giving away, showing, advertising for sale, or distributing to a minor or has in the person's possession with intent to engage in that business or to otherwise offer for sale or commercial distribution to a minor any material with:
 - (i) a description or depiction of illicit sex or sexual immorality; or
 - (ii) a nude or partially denuded figure; or
 - (b) publicly displays at newsstands or any other establishment frequented by minors, or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped, or recorded performance, or any still picture or photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:
 - (i) exploits, is devoted to, or is principally made up of one or more descriptions or depictions of illicit sex or sexual immorality; or
 - (ii) consists of one or more pictures of nude or partially denuded figures.
- (2)
 - (a) A violation of this section is punishable by:

- (i) a minimum mandatory fine of not less than \$500; and
 - (ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.
- (b) This section supersedes Section 77-18-1.

Amended by Chapter 123, 2007 General Session

76-10-1229.5 Breast feeding is not violation of this part.

A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a violation of this part, irrespective of whether or not the breast is covered during or incidental to feeding.

Enacted by Chapter 131, 1995 General Session

76-10-1230 Definitions.

As used in Sections 76-10-1231 and 76-10-1233:

- (1) "Consumer" means a natural person residing in this state who subscribes to a service provided by a service provider for personal or residential use.
- (2) "Content provider" means a person domiciled in Utah or that generates or hosts content in Utah, and that creates, collects, acquires, or organizes electronic data for electronic delivery to a consumer with the intent of making a profit.
- (3)
 - (a) "Hosting company" means a person that provides services or facilities for storing or distributing content over the Internet without editorial or creative alteration of the content.
 - (b) A hosting company may have policies concerning acceptable use without becoming a content provider under Subsection (2).
- (4)
 - (a) "Internet service provider" means a person engaged in the business of providing a computer communications facility in Utah, with the intent of making a profit, through which a consumer may obtain access to the Internet.
 - (b) "Internet service provider" does not include a common carrier if it provides only telecommunications service.
- (5) "Properly rated" means content using a labeling system to label material harmful to minors provided by the content provider in a way that:
 - (a) accurately appraises a consumer of the presence of material harmful to minors; and
 - (b) allows the consumer the ability to control access to material harmful to minors based on the material's rating by use of reasonably priced commercially available software, including software in the public domain.
- (6) "Restrict" means to limit access to material harmful to minors by:
 - (a) properly rating content; or
 - (b) any other reasonable measures feasible under available technology.
- (7)
 - (a) Except as provided in Subsection (7)(b), "service provider" means an Internet service provider.
 - (b) "Service provider" does not include a person who does not terminate a service in this state, but merely transmits data through:
 - (i) a wire;
 - (ii) a cable; or

- (iii) an antenna.
- (c) "Service provider," notwithstanding Subsection (7)(b), includes a person who meets the requirements of Subsection (7)(a) and leases or rents a wire or cable for the transmission of data.

Amended by Chapter 297, 2008 General Session

76-10-1231 Data service providers -- Internet content harmful to minors.

- (1)
 - (a) Upon request by a consumer, a service provider shall filter content to prevent the transmission of material harmful to minors to the consumer.
 - (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted and commercially reasonable method of filtering.
- (2) At the time of a consumer's subscription to a service provider's service, or at the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect, the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1).
- (3)
 - (a) A service provider may comply with Subsection (1) by:
 - (i) providing in-network filtering to prevent receipt of material harmful to minors, provided that the filtering does not affect or interfere with access to Internet content for consumers who do not request filtering under Subsection (1); or
 - (ii) providing software, engaging a third party to provide software, or referring users to a third party that provides filtering software, by providing a clear and conspicuous hyperlink or written statement, for installation on the consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner, receipt of material harmful to minors.
 - (b) A service provider may charge a consumer for providing filtering under Subsection (3)(a).
- (4) If the attorney general determines that a service provider violates Subsection (1) or (2), the attorney general shall:
 - (a) notify the service provider that the service provider is in violation of Subsection (1) or (2); and
 - (b) notify the service provider that the service provider has 30 days to comply with the provision being violated or be subject to Subsection (5).
- (5) A service provider that intentionally or knowingly violates Subsection (1) or (2) is subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2), up to \$10,000 per day.
- (6) A proceeding to impose a civil fine under Subsection (5) may only be brought by the attorney general in a court of competent jurisdiction.
- (7)
 - (a) The Division of Consumer Protection within the Department of Commerce shall, in consultation with other entities as the Division of Consumer Protection considers appropriate, test the effectiveness of a service provider's system for blocking material harmful to minors under Subsection (1) at least annually.
 - (b) The results of testing by the Division of Consumer Protection under Subsection (7)(a) shall be made available to:
 - (i) the service provider that is the subject of the test; and
 - (ii) the public.
 - (c) The Division of Consumer Protection shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

Amended by Chapter 297, 2008 General Session

Amended by Chapter 382, 2008 General Session

76-10-1233 Content providers -- Material harmful to minors.

- (1) A content provider that is domiciled in Utah, or generates or hosts content in Utah, shall restrict access to material harmful to minors.
- (2) If the attorney general determines that a content provider violates Subsection (1), the attorney general shall:
 - (a) notify the content provider that the content provider is in violation of Subsection (1); and
 - (b) notify the content provider that the content provider has 30 days to comply with Subsection (1) or be subject to Subsection (3).
- (3)
 - (a) If a content provider intentionally or knowingly violates this section more than 30 days after receiving the notice provided under Subsection (2), the content provider is subject to a civil fine of \$2,500 for each separate violation of Subsection (1), up to \$10,000 per day.
 - (b) A proceeding to impose the civil fine under this section may be brought only by the state attorney general and shall be brought in a court of competent jurisdiction.

Amended by Chapter 297, 2008 General Session

76-10-1234 Rulemaking authority.

The Division of Consumer Protection shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish acceptable rating methods to be implemented by a content provider under Subsection 76-10-1233(1).

Amended by Chapter 382, 2008 General Session

76-10-1235 Accessing pornographic or indecent material on school property.

- (1) As used in this section:
 - (a) "Pornographic or indecent material" means any material:
 - (i) defined as harmful to minors in Section 76-10-1201;
 - (ii) described as pornographic in Section 76-10-1203; or
 - (iii) described in Section 76-10-1227.
 - (b) "School property" means property, including land and improvements, that a school district or charter school owns, leases, or occupies.
- (2) Except as provided in Subsection (3), a person is guilty of accessing pornographic or indecent material on school property when the person willfully or knowingly creates, views, or otherwise gains access to pornographic or indecent material while present on school property, under circumstances not amounting to an attempted or actual violation of:
 - (a) distributing pornographic material as specified in Section 76-10-1204;
 - (b) inducing acceptance of pornographic material as specified in Section 76-10-1205;
 - (c) dealing in material harmful to a minor as specified in Section 76-10-1206; or
 - (d) indecent public displays as specified in Section 76-10-1228.
- (3) This section does not apply to school or law enforcement personnel when the access to pornographic or indecent material on school property is limited to:
 - (a) investigation of a violation of this section; or
 - (b) enforcement of this section.

- (4) Each separate offense under this section is:
 - (a) a class A misdemeanor if the person is 18 years of age or older; and
 - (b) a class B misdemeanor if the person is under 18 years of age.
- (5) This section does not prohibit disciplinary action for actions that violate this section.

Enacted by Chapter 79, 2007 General Session